IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE BILAL NAZKI**

**and**
**THE HON'BLE MR JUSTICE S.ANANDA REDDY**

**WRIT PETITION NO : 19922 of 2004**

Between:

1 M/s Poornima Enterprieses Main Road, Guntur
W/o.G.V.L.V.Prasad
2 Mr.G.V.L.V.Prasad S/o.Late Balakrishnaiah
R/o.Guntur.
3 G.Narendra Kumar S/o.Late Balakrishnaiah
R/o.Guntur.

**..... PETITIONER(S)**

AND

1 The Commissioner of Commercial Taxes Government of Andhra Pradesh, Hyderabad.
2 The Deputy Commissioner of Commercial Taxes Narsaraopet Division, Guntur District.
3 Mr.P.Srinivasa Rao Asst.Commissioner of Commercial Taxes (Intelligence) Narsaraopet Division, Guntur District.
4 Mr.G.Surya Rao Commercial Tax Officer
Chilkaluripeta, Guntur District.
5 Smt.D.D.Jayamani Commercial Tax Officer (Intelligence)
Narsaraopet division, Guntur District.
6 Mr.G.Venkateshwar Reddy Asst.Commercial Tax Officer (Itelligence),
Narsaraopet Division, Guntur District.
7 Mr.G.Koteswara Rao Asst.Commercial Tax Officer (Intelligence)
Narsaraopet Division Guntur District.
8 Mr.Chinthaiah Asst.Commercial Tax Officer O/o.the C.T.O. Chilkaluripet
Guntur District.

**.....RESPONDENT(S)**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents No.3 to 8 in snatching away the money of Rs.1,25,042/- from the petitioners by adopting illegal and high-handed methods and by applying threat and coercion as illegal, arbitrary and objectionable and declare that the collection of the money from the petitioners without any show cause notice, assessment or demand as without authority of law and contrary to the provisions of the APGST and direct the respondents No.3 to 8 to refund the amount of Rs.1,25,042/- with interest and pass such other order or orders.

**Counsel for the Petitioners: MR.BHASKAR REDDY VEMIREDDY**

**Counsel for the Respondent Nos. 1 and 2: GP FOR COMMERCIAL TAX**

**Counsel for the respondents 3 to 5: Mr. S. Nageswara Reddy, Advocate,**

**Counsel for the respondents 6 to 8: Mr. B. Adinarayana Rao,**

**The Court made the following :**

**HON'BLE MR. JUSTICE BILAL NAZKI**

**AND**

**HON'BLE MR. JUSTICE S.ANANDA REDDY**

**W.P.No. 19922 of 2004**

ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

As a matter of fact, the writ petition stands disposed of by our order dated 8.11.2004, when we held,

> "Therefore we are convinced that this money has been taken away from the possession of the petitioners by the respondents 3 to 8 without any authority of law. The money shall be returned immediately. The interest shall be paid @ 24% per annum till the date of actual payment and the interest shall be paid not by the State Government, but by the respondents 3 to 8 from their personal income."

We had also issued notice to the respondents 3 to 8 as to why prosecution be not ordered against them in accordance with law. That is the only the matter to be decided now. In response to the show cause notice, affidavits have been filed. We are taking the affidavit of 7th respondent for the purpose of disposal of the matter. In para-3 he states,

> "I submit that the search in question was done pursuant to the instructions issued by the Deputy Commissioner of Commercial Taxes, Narasaraopet Division, Guntur. The incident of stopping the vehicle, search thereof and collection of tax was done bonafide exercise of the powers conferred under the Andhra Pradesh General Sales Tax Act. We have performed our duties as instructed by the superior officials who received information of transport of gold in the vehicle in question. Thus search of the vehicle became inevitable and the same was resisted by the occupants of the vehicle. We have nothing personal against the deponent of the affidavit, or against the 3rd petitioner in the writ petition. It is only when the occupants of the vehicle refused to cooperate with us to cause search of the vehicle, the same was taken to the police station where search was conducted. If we are 50 persons out of which 15 were holding lathis/sticks as alleged in the writ petition, we could have caused search by force. The fact that the vehicle was taken to the police station itself demonstrate the bonafide exercise of power by us. I submit that if we had any dishonest intention, we would not have taken them to the police station nor would have collected only Rs.83,351/- and issued receipts thereto. It is evident that a sum of Rs.7,50,150/- was found in the suit cases kept in the said vehicle and the same was noted by the police

also. But unfortunately the petitioner with a malafide intention had alleged that they are carrying only Rs.1,25,042/- and that the said entire amount was taken away by us and issued receipt for only Rs.83,351/-. The said allegation was made without regard to the truth."

Considering the pleas taken by the respondents that they had bonafidedly acted on the instructions of their superiors and it was because of the petitioners' resistance that the incident occurred in a fashion in which it occurred, we are of the view that it may not be necessary to prosecute the respondents particularly when the money has also been returned to the petitioners along with interest, but considering the fact that the stream of law should remain unpolluted and everybody should work within the four corners of the law, we direct that the departmental enquiry be conducted against the respondents 3 to 8 and if proved guilty, suitable disciplinary action be taken against them. With these observations, the writ petition is disposed of. No costs.

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BN J.

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SAR J.

Dt.21.12.2004

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Sd/-

ASST. REGISTRAR

To

1 The Commissioner of Commercial Taxes Government of Andhra Pradesh, Hyderabad.
2 The Deputy Commissioner of Commercial Taxes Narsaraopet Division, Guntur District.
3 **9. 2 CCs to G.P. for Commercial Taxes, High Court Buildings, Hyderabad (out)**

**4. 2 CD copies**